

¹ 5 U.S.C. §§ 8101-8193.

condition and carpal tunnel syndrome. She stopped work on October 27, 2008. Appellant stated that she began using her upper extremities more upon returning to work in June 2008. The employing establishment controverted the claim and provided statements from managers who indicated that she was irregular in attendance and not productive in her position.

By letter dated February 8, 2010, OWCP advised appellant of the evidence needed to establish her claim, including a comprehensive medical report from her treating physician with a reasoned explanation as to how the specific work factors or incidents contributed to her claimed injury.

On February 12, 2010 appellant was treated by Dr. William L. Rutledge, a Board-certified surgeon, for bilateral knee pain and left shoulder pain. Dr. Rutledge diagnosed acute exacerbation of chronic knee pain bilaterally, aggravation of shoulder pain and bilateral carpal tunnel syndrome and recommended physical therapy.

In an April 9, 2010 decision, OWCP denied appellant's claim finding that she failed to establish fact of injury as the medical evidence failed to contain a medical diagnosis in connection with the injury or events.

On April 30, 2010 appellant requested a review of the written record. She submitted an OWCP decision from claim number xxxxxx301. In an October 27, 2008 report, Dr. Rutledge noted a history of appellant's work injury on December 9, 1991, claim number xxxxxx190 and diagnosed bilateral carpal tunnel syndrome, bilateral shoulder tendinosis and rotator cuff injuries. He advised that appellant returned to work part time on June 21, 2008 and developed bilateral shoulder pain from performing computer work and boxing mail. Dr. Rutledge opined that appellant developed an aggravation of her preexisting conditions of bilateral carpal tunnel syndrome, an aggravation of bilateral shoulder pain and impingement syndrome which was directly caused by her limited-duty assignment from June to October 2008.

In a decision dated July 13, 2010, an OWCP hearing representative affirmed the April 9, 2010 decision. Appellant submitted sufficient evidence to establish a medical diagnosis but the medical evidence was insufficient to establish that her claimed shoulder or carpal tunnel condition was caused by her employment.²

On May 26, 2011 appellant requested reconsideration. She disputed the statements from the employing establishment contending that she performed her job to the best of her ability. Appellant asserted that she was reemployed under false pretenses and was unable to perform all of her assigned duties and lost all her benefits. She submitted a November 16, 2009 OWCP decision from case file number xxxxxx301 and a notification of personnel action dated January 2, 2010.

² The hearing representative also directed that the claim be doubled with claim file numbers xxxxxx190 and xxxxxx301. Appellant filed a claim for an injury sustained on December 9, 1991 which was accepted for bilateral carpal tunnel syndrome and a right shoulder injury, file number xxxxxx190. She also filed a claim which was accepted for right ankle contusion, left knee old bucket tear of the medial meniscus, bilateral chondromalacia patella, bilateral carpal tunnel syndrome and right shoulder rotator cuff tear, claim number xxxxxx301.

In an October 15, 2008 duty status report, Dr. Rutledge diagnosed cervical strain and chondromalacia of the knees and returned appellant to work full time with restrictions. In a September 9, 2010 report, he treated appellant for bilateral shoulder pain. Dr. Rutledge noted positive findings upon physical examination and diagnosed bilateral shoulder pain with impingement syndrome, rotator cuff tear of the right shoulder and rotator cuff tendinitis of the left shoulder. In a March 3, 2011 report, he noted that appellant underwent right shoulder surgery with some improvement. Dr. Rutledge advised that appellant complained of significant hand and wrist pain and general emotional distress from her multiple joint problems. He diagnosed chronic right shoulder pain and dysfunction, bilateral carpal tunnel syndrome, left shoulder pain and bilateral knee pain.

In a July 9, 2011 decision, OWCP denied appellant's reconsideration request finding that it was insufficient to warrant further merit review.

LEGAL PRECEDENT

Under section 8128(a) of FECA,³ OWCP has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that OWCP erroneously applied or interpreted a specific point of law;
or

“(ii) Advances a relevant legal argument not previously considered by the OWCP;
or

“(iii) Constitutes relevant and pertinent new evidence not previously considered
by OWCP.”⁴

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

On July 13, 2010 OWCP denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her claimed conditions were caused by her employment. On July 19, 2011 it denied her May 26, 2011 reconsideration request, without a merit review, and she appealed this decision to the Board. The issue presented on appeal is

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(2), requiring OWCP to reopen the case for review of the merits of the claim.

In her May 26, 2011 application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument. Appellant asserted that the statements from her supervisors disputing her claim were inappropriate and misleading. She contends that she performed her job to the best of her ability. Appellant asserted that she was reemployed under false pretenses and was unable to perform her assigned duties. The underlying issue in this case was whether she sustained an aggravation of her bilateral shoulder condition and carpal tunnel syndrome causally related to the October 27, 2008 work injury. That is a medical issue which must be addressed by relevant medical evidence.⁶ Appellant's assertions that do not address the basis for the denial of the claim are insufficient to require OWCP to reopen the claim for a merit review.⁷

Appellant submitted an October 15, 2008 duty status report from Dr. Rutledge who diagnosed cervical strain and chondromalacia of the knees. In a September 9, 2010 report, Dr. Rutledge treated her for bilateral shoulder pain and noted diagnoses. Similarly, in a March 3, 2011 report, he treated appellant for right shoulder injuries and carpal tunnel syndrome which developed while working in 1991. Although these reports are new, they are not relevant because they do not address the particular issue involved, whether appellant's conditions were causally related to her claimed 2008 work injury. Dr. Rutledge failed to address whether the diagnosed conditions were causally related to employment factors beginning in June 2008. Additionally, these notes are also similar to Dr. Rutledge's notes dated October 27, 2008, February 12, 2010 previously of record and previously considered by OWCP in its decisions dated April 9 and July 13, 2010 and found to be insufficient. Therefore, OWCP properly determined that this evidence was cumulative and did not constitute a basis for reopening the case for a merit review. Appellant also submitted a copy of an OWCP decision in another claim, xxxxxx301; however, this evidence is irrelevant to the issue in this case which is whether appellant sustained an occupational disease, beginning in June 2008, causally related to her employment.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

On appeal appellant reiterated her assertion that she developed an aggravation of her bilateral shoulder, knee and carpal syndrome as a result of her work duties. She noted that her prior claims, number xxxxxx301 and xxxxxx190 were related to her current condition. The Board notes, however, that it only has jurisdiction over whether OWCP properly denied a merit review of the claim. As explained, appellant did not submit evidence or argument in support of

⁶ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ See *Johnnie B. Causey*, 57 ECAB 359 (2006) (evidence which does not address the particular issue involved in a case does not constitute a basis for reopening the claim).

her reconsideration request that warranted reopening of her claim for a merit review under 20 C.F.R. § 10.606(b)(2).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board